REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested. Claims 39 and 46 are amended without prejudice or disclaimer.

Rejection of Claims 39-54 Under 35 U.S.C. §103(a)

The Office Action rejects claims 39-54 under 35 U.S.C. §103(a) as being unpatentable over Beach et al. (U.S. Patent No. 6,728,713) ("Beach et al.") in view of Greer et al. (U.S. Patent No. 5,978,828) ("Greer et al.").

Applicants respectfully disagree and submit that one of skill in the art would not have sufficient motivation or suggestion to combine these references. Applicants reassert the previously presented arguments against the combination of Beach et al. and Greer et al. and again submit that (1) these references are either non-analogous, (2) blending them would violate several of the legal principles set forth in the MPEP, and/or (3) blending these references also fails under a KSR analysis. The previously submitted Amendment sets forth these arguments in more detail. Applicants do not acquiesce to the combination of Beach et al. and Greer et al. and reserve the right to present additional arguments against their combination at a later date. However, these arguments are not necessary at this time because Applicants amend claim 39 to clarify the limitation of determining whether stored performance content is out-of-date.

Even if combined, Beach et al. and Greer et al. do not teach all the limitations of claim 39. Claim 39 now recites that each performance content class is determined to be out-of-date differently. Some non-limiting examples of different performance content classes and how they are determined to be out-of-date differently include (1) a weather class which goes out-of-date daily, (2) an advertisement class that goes out-of-date when an advertising contract expires or a

promotion ends, (3) a stock-ticker class that goes out-of-date every 15 minutes, (4) a television show class that goes out-of-date when a newer episode in the television show is released, and so forth. In short, performance content is categorized into classes and the method determines when performance content goes out-of-date based on the class of content, one content class goes out-of-date in one way and another content class goes out-of-date in another way.

In contrast to this multiple class approach to determining when performance content goes out-of-date, Beach et al. teach treating all database updates under the same category of transactions. Beach et al., col. 6., lines 39-40. Beach et al. further teach that recorded programs in general will have an expiration date. Beach et al., col. 18, lines 40-42. Thus, Beach et al. teach a single class (recorded programs) which expire based on individual expiration dates rather than basing the expiration (or going out-of-date) on a class type. Accordingly, Applicants submit that claim 39 is patentable over Beach et al. and Greer et al.

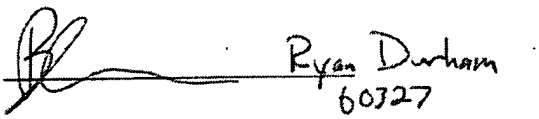
Applicants amend claim 46 similarly to claim 39 and submit that claim 46 is also patentable. Inasmuch as claims 40-45 and 47-54 depend from claims 39 and 46, respectively, and inherit the same limitations, Applicants submit that they are also patentable. Accordingly, Applicants respectfully request that the 35 U.S.C. §103(a) rejection be withdrawn.

CONCLUSION

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

Date: January 5, 2009

By:  Ryan Durham 60327 for Tom Isaacson

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